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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,968	01/17/2002	Reinhold Holtkamp SR.	030502/0147	5426
22428 7590 08/21/2008 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER HAAS, WENDY C	
			ART UNIT 1661	PAPER NUMBER
			MAIL DATE 08/21/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/046,968	<b>Applicant(s)</b> HOLTKAMP, REINHOLD	
	<b>Examiner</b> WENDY C. HAAS	<b>Art Unit</b> 1661	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____             |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                                   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Requirement for Information Under Rule 1.105</u> . |



### **DETAILED ACTION**

This case was appealed on June 2, 2005. The Appeal Brief was filed September 2, 2005. A reply brief was filed April 24, 2006. Oral arguments were heard April 8, 2008. A decision was rendered April 23, 2008, reversing the Examiner's rejections under 35 U.S.C. 112, first paragraph for scope of enablement and written description.

PROSECUTION IN THIS CASE IS REOPENED under 37 CFR 1.198 for consideration of prior art not previously made of record. This prior art is a statutory bar to Claim 1 under 35 U.S.C. 102(b) and thus there is sufficient cause to reopen prosecution. The Director has provided written authority to reopen prosecution in this case and his signature appears below.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Holtcamp, Sr., United States Plant Patent Number 6,109. The claim is directed to an African Violet plant comprising at least one leaf axil that produces more than one flower stem. Holtcamp, Sr. (6,109) teaches an African Violet plant where "out of each leaf axil two flower stems appear". Col. 1, lines 34 and 35. As such, Holtcamp, Sr. anticipates the claim because an African violet plant that displays two flower stems per leaf axil meets the limitations of claim 1. The examiner notes that the inventor and assignee of the instant application and the prior art reference are the same.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Holtcamp, Sr., United States Plant Patent Number 6,575. The claim is directed to an African Violet plant comprising at least one leaf axil that produces more than one flower stem. Holtcamp, Sr. (6,575) teaches an African Violet plant with "Profuse and continuous flowering, with two flower stems being generated at each leaf axil." Col. 1, lines 40 and 41. As such, Holtcamp, Sr. anticipates the claim because an African violet plant that displays two flower stems per leaf axil meets the limitations of claim 1. The examiner notes that the inventor and assignee of the instant application and the prior art reference are the same.

#### ***Conclusion***

Claim 1 is rejected.

Claims 2-8 are free of the art of record.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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*Comments*

This Office action has an attached requirement for information under 37 CFR 1.105. A complete reply to this Office action must include a complete response to the attached requirement for information. The time period for reply to the attached requirement coincides with the time period for reply to this Office action.

/Wendy C Haas/

Primary Examiner, Art Unit 1661

/George C. Elliott, Ph.D./

Director, Technology Center 1600

**REQUIREMENT FOR INFORMATION UNDER 37 CFR 1.105**

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

In response to this requirement, please provide the following information:

- A) Please provide the date 'Improved Atlanta', the subject of United States Plant Patent Number 6,109, was discovered.
- B) Please provide the breeder's designations for 'Improved Atlanta' and 'Annie', the subject matter of United States Plant Patent Number 6,575.
- C) Please indicate whether 'Annie' or 'Improved Atlanta' are related to the seeds sent into space in 1984. Do they share parentage, grandparents, etc.? Are the seeds progeny of either 'Annie' or 'Improved Atlanta'?
- D) Please specify whether 'Annie' or 'Improved Atlanta' display increased numbers of inflorescences per leaf axil with age.
- E) Please specify all other known cultivars that display the multiflorescent trait, regardless of origin.
- F) Please provide more of the genealogy of 'Improved Atlanta' and 'Annie' and note all cultivars in their ancestry that displayed multiple flowers per leaf axil.
- G) Please specify whether or not any of the progeny of 'Improved Atlanta' or 'Annie' have displayed multiple inflorescences per leaf axil.
- H) Please specify whether any of the other progeny of any parent of 'Improved Atlanta' or 'Annie' have displayed multiple inflorescences per leaf axil.

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I) Please specify whether any of the other progeny of any of the space program seed varieties set forth in FIG. 4 (*i.e.*, 'G 68/I', 'H 25/2', 'G 90/17 XVII', 'Velutina AV', 'G90/XVII', 'Velutina X', and 'H 78 pink With Center') irradiated or not, have displayed multiple inflorescences per leaf axil.

J) Please provide the ancestry of the space program seed varieties set forth in FIG. 4 (*i.e.*, 'G 68/I', 'H 25/2', 'G 90/17 XVII', 'Velutina AV', 'G90/XVII', 'Velutina X', and 'H 78 pink With Center') and note all cultivars in their ancestry that have displayed multiple inflorescences per leaf axil.

K) Please note whether or not any of the varieties in FIG. 4 (*i.e.*, 'G 68/I', 'H 25/2', 'G 90/17 XVII', 'Velutina AV', 'G90/XVII', 'Velutina X', and 'H 78 pink With Center') have displayed multiple inflorescences per leaf axil.

L) Please clarify the following information from the transcript of the Oral Hearing held April 8, 2008: Applicant's Attorney stated that the inventor has obtained some plants with more than three inflorescences per leaf axil. Applicant's Attorney also stated that in some varieties the number of inflorescences per leaf axil increases with age. Applicant is asked to provide more information regarding which cultivars display these traits. What are their names or breeder's designations? How many leaf axils do they display?

M) Art provided with this Office Action indicates that Applicant launched Optimara and Rhapsodie seeds into space. Applicant is requested to provide the cultivar names of any seeds launched. At present, applicant provides breeder's designations in the Specification.



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The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. If an item required by the examiner is unknown to the applicant, a statement that the item is unknown to applicant will be accepted as a complete response to the requirement for that item. Where the applicant does not have and cannot readily obtain an item of required information, a statement that the item cannot be readily obtained will be accepted as a complete response to the requirement for that item.

This requirement is an attachment of the enclosed Office action. A complete reply to the enclosed Office action must include a complete response to this requirement. The time period for reply to this requirement coincides with the time period for reply to the enclosed Office action, which is 3 months.

/Wendy C Haas/

Primary Examiner, Art Unit 1661

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/Anne Marie Grunberg/

Supervisory Patent Examiner, Art Unit 1661